

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHEASTERN DIVISION

United States of America,	)	<b>ORDER APPOINTING COUNSEL AND DIRECTING RESPONSE</b>
	)	
Plaintiff,	)	
	)	
vs.	)	Crim. File No. 2:05-cr-90
	)	
Loren Longie	)	
	)	
Defendant.	)	
	)	

could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255.

Here, there are no allegations that indicate 2), 3), or 4) are applicable. Furthermore, Mr. Longie acknowledges that his January 7, 2008 petition was filed well in excess of one year from January 9, 2006, the date on which his conviction became “final.” However, Mr. Longie alleges that from the date of his conviction until approximately October 26, 2007, he had been misled by defense counsel into believing an appeal was pending before the Eighth Circuit Court of Appeals.

Equitable tolling may apply to a § 2255 petition where “extraordinary circumstances” beyond a prisoner’s control prevent timely filing. United States v. Martin, 408 F.3d 1089, 1093 (8th Cir. 2005). Though ineffective assistance of counsel has not generally been considered an extraordinary circumstance, serious attorney misconduct could warrant equitable tolling. Id. Here, Mr. Longie’s affidavit is ambiguous, stating that “Mr. Rosenquist misled me into believing that I had an appeal pending in the Eighth Circuit,” but then stating consistently that he was “under the impression,” or had assumed, that a Notice of Appeal would be filed. Whether the conduct of Mr. Rosenquist created the “extraordinary circumstances” in Martin cannot be definitively determined based on the record.

Due to these circumstances, the Court considers it necessary for the United States to respond on this matter. Therefore, the United States is hereby notified of Mr. Longie’s § 2255 petition and is directed to respond on the issue of the timeliness of this petition by Friday, May 2, 2008. Furthermore, the Court hereby directs the Clerk to appoint counsel for Mr. Longie as soon as possible.

**IT IS SO ORDERED.**

Dated this 8th day of April, 2008.

/s/ *Ralph R. Erickson*  
Ralph R. Erickson, District Judge  
United States District Court